

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

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In the Matter of Applications
 for the Consent to the Transfer
 of Control of Licenses and
 Section 214 Authorizations from

AMERITECH CORPORATION,
 Transferor

to

SBC COMMUNICATIONS, INC.,
 Transferee

CC Docket No. 98-141

**COMMENTS OF BELL SOUTH ON CONDITIONS PROPOSED BY SBC
 COMMUNICATIONS, INC. AND AMERITECH CORPORATION**

BellSouth Corporation and BellSouth Telecommunications, Inc. (BellSouth) hereby submit these comments concerning the proposed conditions for the pending merger of SBC and Ameritech.¹ BellSouth urges the Commission to make it clear that any conditions attached to approval of this merger are limited to the merger and the merging parties, and are not applicable to Section 271 applications or other sections of the Communications Act.

¹ These comments are submitted pursuant to the July 1, 1999, notice establishing a pleading cycle in this proceeding, and the July 7, 1999, Order extending the time to file comments.

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After extensive negotiations with Commission staff, SBC and Ameritech have submitted a list of proposed conditions to the approval of the license transfers that would be involved in their merger. The negotiations and the proposed conditions grew out of the Chairman's concerns that the merger, as initially proposed, raised significant issues with respect to potential public interest harms.² Apparently, the staff has agreed that these conditions address all of the Chairman's concerns and provide additional assurances that the proposed merger will bring substantial benefits to the public.³

The Chairman, the Commission staff and the merging parties seem all to have intended that any conditions attached to the approval of the proposed merger be tied directly to the public interest effects of the merger. Unfortunately, Paragraph 70 of the Proposed Conditions has been drafted in such a way that it could be read to imply that the proposed merger conditions may become prerequisites to Commission approval of Bell company applications to enter in-region long distance markets under Section 271.

Paragraph 70 states:

When considering a request by SBC/Ameritech for in-region, interLATA authority under 47 U.S.C. § 271, the Commission - in view of the public interest benefits inherent in compliance with the requirements of 47 U.S.C. § 271(d)(3) - shall not consider the possible expiration of any of the above Conditions per the terms of this Appendix to be a factor that would render the requested authorization inconsistent with the public interest, convenience, and necessity.

Paragraph 70 as proposed states that the *expiration* of a merger condition is not to be a factor that would render a Section 271 application deficient on public interest

² Letter from Chairman Kennard to R. Notebaert (Ameritech) and E. Whitacre, Jr. (SBC), April 1, 1999, CC Docket No. 98-141.

³ Letter from R. Hetke (Ameritech) and P. Mancini (SBC) to M. Salas (FCC), July 1, 1999, CC Docket No. 98-141.

grounds. However, Paragraph 70 could be read to imply that the *existence* of the merger conditions is a prerequisite to finding that a Section 271 application is in the public interest. If so, the Commission would have added another set of extremely broad and far-reaching requirements to section 271.

Extending any of the conditions thought justified to ensure that this particular merger is in the public interest to Section 271 applications would be unwarranted and beyond the Commission's authority. The Commission has rejected previous entreaties to extend merger conditions to Section 271 activities. Thus, in its order in the Bell Atlantic - NYNEX merger, the Commission concluded that "it is not appropriate, as part of this merger review proceeding, to link the adherence of the conditions listed in Appendices C and D, or related requirements, to Bell Atlantic-NYNEX's ability to market long distance services. We conclude that issues concerning the marketing and provision of long distance services by Bell Atlantic-NYNEX are better addressed in the context of a Section 271 proceeding."⁴

Similarly, the Commission concluded in its evaluation of the AT&T - TCI merger that merger conditions should relate to "harms traceable to the merger," and not to concerns regarding other statutes or public interest concerns.⁵ Of course, by its own

⁴ Memorandum Opinion and Order, *In the Applications of NYNEX Corporation and Bell Atlantic Corporation For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, File No. NSD-I-96-10, 12 FCC Rcd 19985, 20075, ¶ 191 (1997).


⁵ Memorandum Opinion and Order, *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc. to AT&T, Corp.*, CS Docket No. 98-178, (released February 18, 1999) at ¶ 117.

terms, Section 271 prohibits the Commission from layering on additional requirements to those set out by Congress.⁶

If the Commission adopts merger conditions, it should follow its consistent path of linking those conditions directly to issues raised by the merger. As it did in the Bell Atlantic-NYNEX Order, the Commission should clearly state that any merger conditions imposed on the merging companies are not linked to the consideration of Section 271 applications or to other sections of the Communications Act.

Respectfully submitted,

BELLSOUTH CORPORATION

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⁶ Section 271(d)(4) ("The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)").

CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of July, 1999 served the following parties to this action with a copy of the foregoing **COMMENTS OF BELLSOUTH ON CONDITIONS PROPOSED BY SBC COMMUNICATIONS, INC. AND AMERITECH CORPORATION** by hand delivery (as indicated by **) or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties shown on the listing below.

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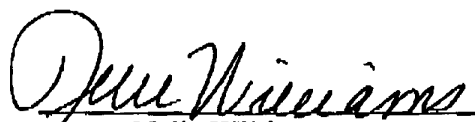
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